APPENDIX

Excerpt from Brief of Respondent Mascaro in Court of Appeals of Maryland.[1]

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b. The negotiations for the contract and the conduct of the parties show that Baltimore Snelling's and the Trial Court's construction of the Contract was wrong.

Even if Section 1(a) of the contract between Baltimore Snelling and Parent Snelling be considered ambiguous such that evidence of the negotiations and conduct of the parties would be considered in interpreting the phrase to determine the intent of the parties, such evidence and the conduct of the parties does not support Baltimore Snelling's contentions with respect to construction of the contract. Mr. Snelling testified that prior to the contract he explained the working of the Snelling and Snelling system to Drossner. He testified that he made clear that Drossner was being given the right to open up an office in Baltimore City and that alone (E. 210-212). Drossner was aware of the situation that existed in Philadelphia at that time, that is, that there were suburban offices in close proximity to the office in the City of Philadelphia (E. 206-208). Indeed, he initially expressed interest in purchasing such a suburban office (E. 206). Additionally, shortly after signing his contract for Baltimore City he sought options for suburbs of Washington knowing that a licensee existed in Washington, D.C. (E. 92, 215-216, 394). Drossner obviously knew that if granted a Philadelphia or Washington suburb franchise, he would be advertising in the same newspapers as the city licensee, and perhaps, other suburban licensees.

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[1] A copy of the full Brief has been certified to this Court by the Clerk of the Court of Appeals of Maryland.

Drossner's actions in connection with his purchase of the Towson franchise are also indicative that his contentions regarding interpretation of the contract were an afterthought. His initial correspondence with reference to the Towson franchise indicate that he clearly regarded it as separate and distinct from the franchise he had been granted (E. 447-448, 450). At first he balked at paying a franchise fee for it, not because he regarded it as included in his territory, but because he regarded it as too small (E. 447). In the end, however, he did pay a franchise fee for it (E. 223, 398). If it was for sale to Drossner, it was just as much for sale to anybody else. Nor can it be claimed by Baltimore Snelling or Drossner that his actions in connection with the Towson franchise were based on the fact that the contract of July 5, 1960, restricted him to one office. He sought for and did obtain the license to open an additional office within Baltimore City and paid no franchise fee for it (E. 414-430). However, he did pay the requested franchise fee for Towson as it was initially suggested to him (E. 223, 398, 448-449).

Additionally Drossner sought and paid for an additional franchise in Glen Burnie. It is obvious that any Glen Burnie franchise would have to use the Baltimore Sun and News Post for advertising purposes as well as radio and television stations located in Baltimore. In that sense a Glen Burnie franchise would be using the name Snelling and Snelling in Baltimore to the same extent Mascaro seeks. Purchase by Drossner of the Glen Burnie franchise was recognition of the fact that it was for sale to him just as it would be to anybody else.

In fact, Drossner actually negotiated and sought to purchase the very franchise that Defendant Mascaro purchased (E. 223). He couldn't come to terms on the price to be paid

for the franchise, which is the reason he was unable to obtain it (E. 223-224). This is the real reason for this action here.

In connection with the purchase of the additional franchises in Towson and Glen Burnie and also in Highlandtown it is significant to note that those contracts spell out the nature of the grant or franchise exactly as Defendant Mascaro and Mr. Snelling contend the Baltimore Snelling contract should be interpreted. The pertinent sections of those contracts, signed by Drossner, and showing the nature of the franchise grant are as follows:

> "1. (a) SNELLING hereby grants to Licensee the right to use the registered tradename 'Snelling and Snelling', the Fort Snelling registered trademark, and to be identified as a member of the Snelling and Snelling System in connection with the operation of a personnel consulting and employment agency business (herein sometimes called 'Licensee's business') to be conducted at an office located within the following area: [Area Described]
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> "1. (c) In connection with the operation of Licensee's business, Licensee shall use only the name 'Snelling and Snelling' and Licensee shall identify himself as a member of the Snelling and Snelling System, unless state law requires other or additional identification. SNELLING shall not grant to another person, firm or corporation the right to use the name 'Snelling and Snelling' in connection with the operation of a personnel consulting and employment agency office within the area described in paragraph 1(a) hereof; provided, however, that in the event SNELLING shall open offices or grant such right to others outside the described area but within the State where Licensee's office is located, Licensee does hereby release and waive any objection to the use of the name 'Snelling and Snelling' in connection therewith.
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"6. (b) Licensee shall advertise only in media which maintain a substantial circulation or audience within Licensee's franchise area" (E. 395-396, 401, 415-416, 420, 431-432, 436).

Indeed Drossner has agreed with Parent Snelling to execute a contract for Baltimore Snelling in the same form and containing the same provisions as above (E. 106-107, 461-464). The "reason" such a contract has not been executed is ostensibly the reluctance of Drossner's partner in Baltimore Snelling, Burt Cohen (E. 106-107, 461-464). It is significant that Cohen was not a participant in negotiations leading up to the execution of the Baltimore contract (E. 205-215), and did not testify at trial.

At trial Baltimore Snelling introduced evidence of sums spent on advertising. Included in these sums were expenditures for the Towson, Highlandtown and Glen Burnie offices (E. 71-72, 301-302). Thus, Baltimore Snelling seeks advantage from lumping itself with the other Snelling and Snelling franchises in which Drossner has an interest. Actually, the four corporations advertise as one (E. 71-72), and are apparently treated as one by their operators. Indeed a reading of the opinion below indicates that the Trial Court treated the other corporation as complainants also (E. 24, 301, 302). But the Towson, Glen Burnie and Highlandtown offices all specifically waived any objections to Mascaro's use of the name "Snelling and Snelling" (E. 396, 416, 432). Drossner and Baltimore Snelling knew this was an inherent factor in the Snelling system and that this was the intent of the Baltimore Snelling contract. In short, this interpretation of the contract is the consistent approach taken by the Parent Snelling office and is in fact the Snelling system.

Actually the contention with regard to use of the name Baltimore Snelling attempts to put forward here is illogical

and not commercially realistic. Baltimore Snelling's main complaint concerning the Defendant Mascaro is his advertisements in the Baltimore newspapers. Of course, newspapers do not recognize geographical boundaries. In this connection, it should be noted that the evidence showed that Baltimore Snelling advertised over WBAL-TV and radio (E. 285, 290-291). The coverage of these media extends to Washington, Silver Spring, Hagerstown, Bethesda, Arlington, Alexandria and Frederick (E. 508-511). In each of these locations there are other Snelling and Snelling licensees (E. 496) so that, in a sense, Baltimore Snelling is also using the name Snelling and Snelling in areas where other licensees are located.

In short, the evidence shows that the workings of the Snelling system are such that licensees are granted certain geographical areas in which to place an office and are promised that no other licensee will be granted an office within that territorial limitation. However, licensees are permitted to advertise in any media that substantially serves its area and to place or serve customers wherever located. Drossner knew of this system before he signed the contract and the evidence shows that he evolved his theory of the contract only as an afterthought.

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